REMARKS

The Applicant has now had an opportunity to carefully consider the comments set forth in the Office Action that was mailed February 6, 2008. All of the rejections are respectfully traversed. Amendment, reexamination and reconsideration of the application are respectfully requested.

The Office Action

In the Office Action that was mailed February 6, 2008:

claims 1, 9 and **16** were objected to for including informalities;

claims 1-12, 16-21 and **26** were rejected under 35 USC §103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0057420 by Curcio et al. ("Curcio") in view of U.S. Patent No. 7,003,794 to Arye ("Arye"); and

claims 13-15, 22-24 and **27-29** were rejected under 35 USC §103(a) as being unpatentable over Curcio, Arye and U.S. Patent No. 6,618,591 to Kalliokulju et al. ("Kalliokulju").

The Present Application

By way of brief review, the present application is directed toward systems and methods for responding to a Maximum Bitrate request in a more efficient manner than was previously known or provided (e.g. paragraphs 6-9). The methods include responding to a Maximum Bitrate request by comparing the requested Maximum Bitrate and a Maximum Bitrate limit to Supported Maximum Bitrates. If the Maximum Bitrate is not at least as high as the lowest Supported Maximum Bitrate, communications services associated with the requested Maximum Bitrate are not provided. If the Maximum Bitrate is at least as high as the lowest Supported Maximum Bitrate, an Offered Bitrate is selected from a set of Supported Maximum Bitrates that is at least as high as the requested Maximum Bitrate and no higher than the Maximum Bitrate limit as long as such a Supported Maximum Bitrate exists. If such a Supported Maximum Bitrate does not exist, the Offered Bitrate is selected to be a highest available Supported Maximum Bitrate that is not higher than the Maximum Bitrate limit (Abstract).

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The Cited Document

In stark contrast, the primary reference of the Office Action by Curcio is related to a method for packet switched streaming of media, such as video and/or audio. The method includes noticing a change in a downlink air-interface bandwidth, transmitting a request for adapting a streaming server transmission bit rate and adapting the streaming server transmission bit rate in accordance with the request. The request indicates to the streaming server a current downlink air-interface bandwidth and adapting the streaming server transmission bit rate is performed in accordance with the current downlink air-interface bandwidth (Abstract).

In this regard, it is respectfully submitted that the streaming server of Curcio does not consider whether or not the request is appropriate. <u>Contrary to the assertions of the Office Action</u>, paragraph 94, lines 1-7, do not disclose or suggest determining if a maximum bit rate limit of the subscriber is above a lowest valued member of a set of available maximum bit rate values. In this regard, it is respectfully submitted that Curcio does not discuss receiving a requested maximum bit rate attribute value or determining if a maximum bit rate <u>limit</u> of the subscriber is equal to or greater than a value of a lowest valued member of a set of available maximum bit rate values. Instead, Curcio discusses an air-interface bandwidth. Since the mobile client device of Curcio sends a request for adapting streaming server transmission bit rate to this air-interface bandwidth, it appears that the Office is drawing an analogy between this air-interface bandwidth and, for example, the maximum bit rate attribute value that is recited as being received in **claim 1**. However, even if this analogy were a fair one, the cited portion of paragraph 94 of Curcio discusses only this air-interface bandwidth and <u>not</u> <u>anything that could be fairly construed as a</u> **maximum bit rate limit** of a subscriber. Accordingly, the assertions of the Office in this regard represent **<u>clear errors</u>** of the Office Action.

The secondary documents cited by the Office Action do not cure the deficiencies of Curcio.

For example, Arye discusses a multicasting system for reception of multimedia information. A multimedia content source includes a plurality of multimedia contents, wherein each multimedia content is supported by a primary multimedia stream

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transmitted over a primary dedicated channel having a primary bandwidth. At least one multimedia smart terminal is configured to receive from a content switch over a network each multimedia content as a secondary multimedia stream transmitted over a secondary channel having a secondary bandwidth. The content switch includes a bandwidth scaler configured to scale each primary multimedia stream to a plurality of secondary multimedia sub-streams that are substantially synchronized. The multimedia smart terminal includes a smart terminal sub-stream switch configured to switch among the plurality of secondary multimedia sub-streams in order to select a substantially optimum secondary multimedia sub-stream. The substantially optimum secondary multimedia sub-stream includes a substantially optimum relationship between an error rate level determined at the time of reception of a multimedia content and the quality of reception of a multimedia content (Abstract).

It is not clear why Arye is cited. For example, page 4 of the Office Action stipulates that Curcio does not disclose certain of the subject matter of **claim 1** and then asserts that Arye discloses certain subject matter. However, the relationship between the subject matter that the Office stipulates is not disclosed by Curcio and the subject matter that the Office asserts **is** disclosed by Arye is not clear. Even if Arye discloses the provision of using a content switch and a database, wherein the database includes entries for the content being streamed to the client, wherein each database entry includes a lookup table comprising an entry for each secondary multimedia sub-stream associated with that specific content, that does not disclose or suggest the subject matter that the Office stipulates is not disclosed by Curcio. Accordingly, the rejection of, for example, **claim 1** in light of Curcio and Arye represents a **clear error** of the Office Action.

Kalliokulju discusses a mechanism wherein a link between a mobile station operating within a universal mobile telecommunications system (UMTS) is checked either at the mobile station itself or within a Radio Network Controller (RNC) to determine an error rate greater than a threshold. If found to be operating at greater than the error rate threshold, the bitrate of the link is reduced. If more than one PDP context is present, the PDP contexts can be reduced one at a time, according to selected criteria, until the error rate is reduced below the threshold. Once the

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interference is reduced to a level that will support the services at their former level, the mobile station can once again begin freely operating at a bitrate between the minimum guaranteed bitrate and a maximum bitrate, commencing randomly if under the control of the mobile station, or according to a timed sequence if controlled from the RAN (Abstract). Accordingly, Kalliokulju does not cure the deficiencies of Curcio.

The Claims Are Formal

Claims **1, 9** and **16** were objected to for including typographical errors. The assistance of the Examiner in this regard is noted with appreciation.

Claims **1, 9** and **16**, as well as **claims 5, 13, 14, 15** and **18** have been amended to correct the errors noted by the Examiner and others.

With regard to the error related to ("lowest value") in lines 14 and 18 of **claim 16**, it is noted that the phrase has been replaced with --temporary working value--, similar amendments have been made in other portions of **claim 16** and in **claim 18**. These amendments are supported throughout the specification including, but not limited to, Figs. 2-7 and **claims 1-5, 6-12** and **19**. Accordingly, it is respectfully submitted that these amendments could have been anticipated and do not require a new search.

The Claims Are Not Obvious

Claims **1-12, 16-21** and **26** were rejected under 35 USC §103(a) as being unpatentable over Curcio in view of Arye.

Among the assertions made by the Office Action by way of an explanation of the rejection of **claim 1**, is the assertion that paragraph 94, lines 1-7, of Curcio disclose determining if a maximum bit rate limit of the subscriber is equal to or greater than a value of a lowest valued member of a set of available maximum bit rate values. However, the cited portion of paragraph 94 does not disclose or suggest available maximum bit rate values or determining if a maximum bit rate **limit** of a subscriber is equal to or greater than a value of a lowest valued member of a set of available maximum bit rate values.

Instead, lines 1-7 of paragraph 94 discuss a situation wherein a server has content encoded at bit rates of 59, 50 and 30 kbps and wherein the available air-

interface bandwidth suddenly drops from 59.2 kbps to 44.8 kbps. Under these circumstances, the server, knowing the actual air-interface bandwidth can, instead of choosing a new transmission bit rate of 30 kbps, choose a new transmission bit rate 50 kbps and, in addition, use another bandwidth adjustment technique to reduce the transmission bit rate from 50 kbps to exactly or close to 44.8 kbps.

It is respectfully submitted that the cited portion of paragraph 94 is completely unrelated to determining if a maximum bit rate **limit** of a subscriber is equal to or greater than a value of a lowest valued member of a set of available maximum bit rate values.

Accordingly, Curcio does not include the subject matter for which it is relied and **claim 1**, as well as **claims 2-5,** which depend therefrom, is not anticipated and is not obvious in light of Curcio and Arye.

Additionally, the other cited portions of Curcio do not support the assertions that Curcio discloses other elements of **claim 1** of the present application. For example, lines 4-9 of paragraph 76 and lines 6-7 of paragraph 77 do not disclose or suggest receiving a requested maximum bit rate attribute value. Instead, the cited portion of paragraph 76 indicates that if an available bandwidth changes, for example due to changes in the time slot configuration or coding scheme, the client detects the change of the available bandwidth and requests the streaming server to adapt the server bandwidth.

The cited portion of paragraph 77 indicates that the client **does not** request the server to switch to sending at a specific bit rate, but rather the client informs the server of the current air-interface bandwidth and explains parenthetically that this air-interface bandwidth is the maximum bit rate at which the client is able to receive the streaming media. It is respectfully submitted that this current air-interface bandwidth is not the same as the maximum bit rate attribute referred to in the present application and recited in **claim 1** (e.g., see paragraphs 1-9 of the present application).

Paragraph 94, lines 7-10, does not disclose or suggest offering to provide requested communication services in association with an offered maximum bit rate. Instead, the cited portion discusses simply reducing the transmission bit rate from 50 kbps to exactly or close to 44.8 kbps. There is no **offer** involved.

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Additionally, it is respectfully submitted that the indication at paragraph 169, lines 9-15, that the server takes appropriate action does not give the Office license to interpret the phrase --appropriate action-- based on hindsight reasoning based on information gleaned only from the present application, to mean --denying the request the requested maximum bit rate limit is too low for the server to support--.

It is respectfully submitted that Curcio does not disclose or suggest that appropriate action includes denial of service. Moreover, it is respectfully submitted that **claim 1** does not refer to a requested maximum bit rate **limit**. Instead, **claim 1** recites declining the requested communication service if the maximum bit rate limit of the subscriber is not equal to or greater than the value of the lowest valued member of the set of available maximum bit rate values. In this regard, it is noted that the maximum bit rate limit recited in **claim 1** is not requested. Instead, it is a parameter of the subscriber that is determined in response to receiving a requested maximum bit rate attribute value. The requested value and the limit are two different pieces of information and the limit is not recited as being requested. Furthermore, Curcio does not disclose or suggest denying a request if a maximum bit rate limit (requested or otherwise) is too low for the server to support. Still further, **claim 1** does not recite denying a request if a requested maximum bit rate limit is too low for the server to support. Instead, **claim 1** recites declining the requested communication service if the maximum bit rate limit of the subscriber is not equal to or greater than the value of the lowest valued member of the set of available maximum bit rate values.

Accordingly, these further assertions of the Office Action represent **clear erros** and for any or all of these foregoing additional reasons, Curcio does not include the subject matter for which it is relied and **claim 1** is not anticipated and is not obvious in light of Curcio and Arye.

Furthermore, the assertions of the Office Action with regard to what is disclosed by Arye are respectfully traversed.

The mere depiction in Fig. 4 of a database (76) and a look up table (78) does not disclose or suggest the subject matter that the Office Action stipulates is not disclosed by Curcio including: "that if the maximum bit rate limit of the subscriber is equal to or greater than the value of the lowest valued member of the set of available maximum bit

rate values, the offered maximum bit rate value being equal to a value of a member of an allowable subset of the set of available maximum bit rate values, the allowable sub set consisting of members of the set of available maximum bit rates that have values less than or equal to the maximum bit rate limit, and the offered maximum bit rate being equal to a value of a member of the allowable subset that is greater than or equal to, the lower of the requested maximum bit rate value and the maximum bit rate limit, or has the highest value of the subset".

Even if Arye discloses the provision of using a content switch and a database, wherein the database includes entries from the content being streamed to the client, wherein each database entry includes a look up table comprising an entry for each secondary multimedia substream associated with the specific content, this does not disclose or suggest an offered maximum bit rate value determined according to the logic recited in **claim 1**.

For at least the foregoing additional reason, **claim 1**, as well as **claims 2-5**, which depend therefrom, is not anticipated and is not obvious in light of Curcio and Arye.

Furthermore, there is no motivation in the art to combine the database and look up table of Arye into the method of Curcio other than that provided by information gleaned only from the present application.

Curcio does not indicate or suggest any problem of synchronization. Accordingly, even if including a database or look up table such as disclosed by Arye would solve such a synchronization problem (which is disputed), since Curcio does not disclose or suggest such a problem exists, there is no motivation to include the database and table from Arye into the method of Curcio, and again, the assertions of the Office Action represent **clear errors** and **claim 1,** as well as **claims 2-5,** which depend therefrom, is not anticipated and is not obvious in light of Curcio and Arye.

In an effort to explain the rejection of **claim 2**, the Office Action relies at first on specific portions of paragraph 94 (i.e., lines 1-4 and then lines 1-10) and then vaguely on all of paragraph 94 of Curcio.

However, **claim 2** recites *inter alia*: setting a temporary working value equal to a lowest value selected from among the requested maximum bit rate attribute value **and**

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the maximum bit rate limit. Paragraph 94 simply does not disclose or suggest a temporary working value or setting a temporary working value equal to a requested maximum bit rate attribute value **or** a maximum bit rate limit depending on which of those has the lowest value. In this regard, the Office Action cites lines 1-4 (of column 94, which it is assumed is a reference to paragraph 94). However, those lines indicate that: --if, for example, the server has content encoded at bit rates 59 kbps, 50 kbps and 30 kbps, and the available air-interface bandwidth is suddenly dropped from 59.2 kbps to 48.8 kbps, the server now knowing the actual air-interface bandwidth can, --. It is respectfully submitted that nothing in these lines discloses or suggests setting a temporary working value equal to a lowest value selected from among the requested maximum bit rate attribute value and the maximum bit rate limit.

Accordingly, the assertions of the Office in this regard represent **clear errors** of the Office Action and **claim 2** is not anticipated and is obvious in light of Curcio and Arye.

With regard to the second element of **claim 2**, which recites determining whether the temporary working value is equal to a value of a member of the allowable subset of the set of maximum bit rate values, higher than the values of all the members of the allowable subset of the set of available maximum bit rate values, between a next higher valued member and a next lower valued member of the allowable subset of the set of available maximum bit rate values, or lower than the values of all the members in the set of available maximum bit rate values, the Office Action cites lines 1-10 of paragraph 94.

However, the first portion of that range is discussed above and is unrelated to a temporary working value or determining how a temporary working value compares to members of a set or subset of other values.

The remainder of that range of lines of paragraph 94 indicate that a server, instead of choosing a new transmission rate of 30 kbps (which would have been the new bit rate in a prior-art case), chooses a new transmission bit rate 50 kbps and, in addition, uses another bandwidth adjustment technique to reduce the transmission bit rate from 50 kbps to exactly or close to 44.8 kbps.

It is respectfully submitted that this second portion of lines 1-10 of paragraph 94 does not disclose or suggest a temporary working value or determining how the temporary working value compares to members of the allowable subset of the set of available maximum bit rate values as recited in the second element of **claim 2**.

For at least the foregoing additional reasons, the explanation of the rejection of **claim 2** represents **clear errors** of the Office Action and **claim 2** is not anticipated and is not obvious in light of Curcio and Arye.

With regard to the remaining elements of **claim 2**, the Office Action cites all of paragraph 94. However, paragraph 94 does not disclose or suggest offering to provide requested communications services in association with an offered maximum bit rate value. Instead, paragraph 94 of Curcio discusses reducing the transmission bit rate from 50 kbps to exactly or close to 44.8 kbps (lines 7-10). Additionally, as indicated above, no portion of paragraph 94 discloses or suggests setting a temporary working value equal to any value. Accordingly, paragraph 94 does not disclose or suggest setting an offered maximum bit rate value equal to the temporary working value under any circumstances.

For at least the foregoing additional reasons, **claim 2** is not anticipated and is not obvious in light of Curcio and Arye.

For portions of **claim 3** that recite subject matter similar to that recited in **claim 2**, the Office Action makes similar assertions and cites lines 1-4 and lines 1-10 of paragraph 94. In this regard, arguments similar to those submitted in support of **claim 2** are submitted in support of **claim 3**. Lines 1-4 do not disclose or suggest setting a temporary working value as recited in **claim 3** and lines 1-10 do not disclose or suggest determining whether the temporary working value meets any of the criteria recited in **claim 3**.

With regard to the remaining two elements of **claim 3**, the Office Action again cites all of paragraph 94. However, paragraph 94 does not disclose or suggest offering to provide requested communication services at an offered maximum bit rate value. Instead, as indicated above, paragraph 94 discusses choosing a new transmission bit rate 50 kbps and, in addition, using another bandwidth adjustment technique to reduce the transmission bit rate from 50 kbps to exactly or close to 44.8 kbps (lines 7-10).

Additionally, <u>paragraph 94 does not disclose or suggest</u> setting the offered maximum bit rate value equal to a value of the highest valued member of the allowable subset of the set of available maximum bit rate values if the temporary working value is higher than the values of the members of the allowable subset of the set of available maximum bit rate values.

Furthermore, the assertions of the Office Action that "the next highest bit rate value will be selected, then using additional bandwidth adjustment techniques, the bit rate value is lowered so that it is exactly or close to the desired bit rate value" <u>only serves to support the position of the Applicant</u>.

The referenced portion of paragraph 94 clearly does not suggest setting an offered maximum bit rate value equal to the highest valued member of the allowable subset. Moreover, the quoted portion does not disclose or suggest setting the offered maximum bit rate value equal to a value of the highest valued member of the allowable subset if the temporary working value is higher than the values of the members of the allowable subset.

For at least the foregoing additional reasons, **claim 3** is not anticipated and is not obvious in light of Curcio and Arye.

With regard to portions of **claim 4** that are similar to portions of **claims 2** and **3**, the Office Action makes similar citations and assertions as were made in an effort to explain the rejections of **claims 2** and **3**. Accordingly, arguments similar to those submitted in support of **claims 2** and **3** are submitted in support of **claim 4**. Lines 1-4 and lines 1-10 of paragraph 94 do not disclose or suggest setting a temporary working value as recited in **claim 4** for determining whether the temporary working value meets any of the criteria recited in **claim 4**.

With regard to setting the offered maximum bit rate value as recited in **claim 4**, the Office Action cites paragraph 96. However, the referenced discussion of a server being able to --choose the next lowest to the actual available air-interface bandwidth-- does not disclose or suggest setting an offered maximum bit rate value equal to a value of the lowest valued member of the allowable subset of the set of available maximum bit rate values if the temporary working value is lower than all the values of the members of the set of available maximum bit rate values as recited in **claim 4**. Accordingly, the

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rejection of **claim 4** represents a **clear error** of the Office Action and **claim 4** is not anticipated and is not obvious in light of Curcio and Arye.

With regard to offering to provide requested communication services as recited in **claim 4**, the Office Action again cites paragraph 94. However, as indicated above, Curcio does not disclose or suggest offering to provide requested communication services. Instead, the system of Curcio simply adjusts a transmission as seen fit by the server according to the method of Curcio.

For any or all of the foregoing, **claim 4** is not anticipated and is not obvious in light of Curcio and Arye.

With regard to portions of **claim 5** that are similar to **claims 2, 3** and **4**, the Office Action cites lines 1-4 and lines 1-10 of paragraph 94 and makes similar to assertions to those made with regard to **claims 2-4**. In this regard, arguments similar to those submitted in support of **claims 2-4** are submitted in support of **claim 5**.

With regard to the third element recited in **claim 5**, the Office Action again refers to paragraph 94 of Curcio. However, the cited text discusses starting with the next highest bit rate and then using additional bandwidth adjustment techniques to reduce the bit rate so that it is exactly or close to a desired bit rate value, and the subject portion of **claim 5** recites setting the offered maximum bit rate value equal to a value of the next higher valued member of the allowable subset. **Claim 5** does not recite using additional bandwidth adjustment techniques as suggested in paragraph 94. Accordingly, it is respectfully submitted that paragraph 94 **teaches away** from setting the offered maximum bit rate value equal to a value of a next higher valued member of the allowable subset.

Moreover, the subject portion of **claim 5** recites, and the Office Action does not address, setting the offered maximum bit rate value as described if the temporary working value is between the next higher and a next lower valued members of the allowable subset...**and** the next higher valued member is less than or equal to the maximum bit rate limit.

With regard to the fourth element of **claim 5**, the Office Action again cites paragraph 94 and asserts that paragraph 94 discloses offering to provide requested communication services in association with the offered maximum bit rate value.

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However, **claim 5 does not recite offering to provide requested communication** **services in association with the offered maximum bit rate value**. Instead, the fourth element of **claim 5** recites setting the offered maximum bit rate value equal to a value of the next lower member of the allowable subset of the set of available maximum bit rate values if the temporary working value is between the next higher and the next lower valued members and the next higher member is greater than the maximum bit rate <u>limit</u>.

The Office Action does not address this subject matter. Additionally, it is respectfully submitted that Curcio and Arye do not disclose or suggest this subject matter.

For at least any or all of the foregoing additional reasons, **claim 5** is not anticipated and is not obvious in light of Curcio and Arye.

Claim 6 recites five elements and the Office Action relies on Curcio for disclosure of four of them.

With regard to the **first element** recited in **claim 6**, the Office Action appears to draw an analogy between disclosure in paragraph 93 of a client sending a request to the streaming server to perform bandwidth adaptation to the recitation in **claim 6** of receiving a requested maximum bit rate attribute value. However, paragraph 93 does not disclose or suggest a maximum bit rate attribute value.

With regard to the **third element** recited in **claim 6**, the Office Action cites paragraph 94, lines 1-11. However, as indicated above, lines 1-11 of paragraph 94 do not disclose or suggest determining a temporary working value from among the requested maximum bit rate attribute value **and** the maximum bit rate <u>limit</u>. Indeed, paragraph 94 does not disclose or suggest anything that might be considered analogous to the maximum bit rate limit recited in **claim 6**. In regard to this element, the Office Action asserts that Curcio discloses that the server chooses a bit rate from the available bit rates, which is later increased or decreased using another bandwidth adjustment technique. However, this is unrelated to determining a temporary working value from among the requested maximum bit rate attribute value and the maximum bit rate limit. Furthermore, the assertion that paragraph 94, lines 1-11, indicates that a bit rate is chosen that is later increased is respectfully traversed. Paragraph 94 only discusses reducing a bit rate by transmission of some frames (pictures) (lines 10-13).

Accordingly, the rejection of **claim 6** includes <u>**clear errors**</u> and **claim 6**, as well as **claims 7-15,** which depend therefrom, is not anticipated and is not obvious in light of Curcio and Arye.

With regard to the **fourth element** recited in **claim 6**, the Office Action cites paragraph 94, lines 1-10. However, the Office Action characterizes that portion as indicating that the server can now choose a new transmission bit rate that may be higher or lower than the maximum bit rate requested by the client and use additional bandwidth adjustment techniques to achieve the proper requested maximum bit rate. This characterization is incorrect. The portion of paragraph 94 indicates that the server can choose a new transmission bit rate --50 kbps and, in addition, use another bandwidth adjustment technique to reduce the transmission bit rate from 50 kbps to exactly or close to 44.8 kbps--. The referenced portion does not indicate that a new transmission rate may be higher than a maximum bit rate requested by the client. Moreover, the cited portion does not disclose or suggest a maximum bit rate requested by the client or any other maximum bit rate. Furthermore, even if paragraph 94, lines 1-10, could be construed as disclosing that a server can choose a new transmission bit rate that may be higher or lower than a maximum bit rate requested by a client, that does not disclose or suggest: --determining the temporary working value is a network element supported value, above all network element supported values, below all network element supported values or between two network element supported values-- as is recited in **claim 6**.

For at least the foregoing additional reasons, **claim 6,** as well as **claims 7-15,** which depend therefrom, is not anticipated and is not obvious in light of Curcio and Arye.

With regard to the **last element** of **claim 6**, the Office Action cites paragraph 96. However, paragraph 96 does not disclose or suggest offering a value in response to a maximum bit rate request. Moreover, paragraph 96 does not disclose or suggest offering a value in response to the maximum bit rate request based on a determination of whether the temporary working value is above all network element supported values, below all network element supported values or between two network element supported values as is recited in **claim 6**.

The Office Action stipulates that Curcio does not disclose the **second element** recited in **claim 6** and relies on Arye for disclosure of this subject matter.

However, in this regard, the Office Action simply refers to Fig. 4 and the database 76 and look up table 78 depicted therein. However, nothing in the depiction of database 76 and look up table 78 discloses or suggests: determining if a lowest network element supported maximum bit rate value is equal to or less than a maximum bit rate limit associated with a subscriber and if the lowest network element supported maximum bit rate value is equal to or less than the maximum bit rate limit associated with the subscriber performing the third, fourth and fifth elements recited in **claim 6**.

It is respectfully submitted that even the characterization of the subject matter of Fig. 4, database 76 and look up table 78 provided by the Office Action, i.e. the assertion that Arye discloses the provision of using a content switch and database, wherein the database includes entries for the content being streamed to the client, wherein each database entry includes a look up table comprising an entry for each secondary multimedia substream associated with that specific content, is unrelated to the recitation in the second element of **claim 6**.

For at least the foregoing additional reasons, the rejection of **claim 6** is based on **clear errors** and **claim 6**, as well as **claims 7-15,** which depend therefrom, is not anticipated and is not obvious in light of Curcio and Arye.

Furthermore, there is no motivation in the art to combine the look up table comprising entries for secondary multimedia substreams associated with specific content from Arye into the system and method of Curcio and making such a combination would not arrive at the subject matter of **claim 6**.

It is respectfully submitted that the only motivation for combining the database and/or look up table of Arye with the subject matter of Curcio is information gleaned from the present application. Accordingly, the rejection of **claim 6** is based on impermissible hindsight reasoning and **claim 6**, as well as **claims 7-15,** which depend therefrom, is not anticipated and is not obvious in light of Curcio and Arye.

Claim 7 recites *inter alia*: --offering the temporary working value in response to the maximum bit rate request if the temporary working value is a network element supported value--. In regard to **claim 7**, the Office Action cites paragraph 96 of Curcio.

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However, paragraph 96 does not disclose or suggest offering a temporary working value if the temporary value is a network element supported value. Instead, paragraph 96 discusses choosing the bit rate next lowest to the actual available air-interface bandwidth, or to choose a bit rate slightly higher than the actual available air-interface bandwidth but to use additional bandwidth adaptation techniques (such as skipping transmission of some frames) in order to fit the server transmission bit rate into the actual available air-interface bandwidth.

For at least the foregoing additional reasons, **claim 7** is not anticipated and is not obvious in light of Curcio and Arye.

In regard to **claim 8**, the Office Action again cites paragraph 96 of Curcio. However, **claim 8** recites *inter alia:* --offering a highest network element supported value in response to the maximum bit rate request if the temporary working value is above all network element supported values--. It is respectfully submitted that paragraph 96 does not disclose or suggest <u>offering</u> a value. Instead, paragraph 96 discusses <u>choosing</u> a value. Moreover, Curcio does not disclose or suggest a maximum bit rate request or a temporary working value as recited in **claim 8** and the combination of **claim 6** and **claim 8**.

For at least the foregoing additional reasons, **claim 8** is not anticipated and is not obvious in light of Curcio and Arye.

With regard to **claim 9**, the Office Action again cites paragraph 96 of Curcio. However, Curcio does not even address the situation wherein the <u>available bandwidth</u> is below <u>a lowest available bit rate</u> of Curcio. Furthermore, paragraph 96 does not disclose or suggest <u>making an offer of a value</u>. Paragraph 96 does not disclose or suggest a maximum bit rate request or a temporary working value.

For at least the foregoing additional reasons, **claim 9** is not anticipated and is not obvious in light of Curcio and Arye.

With regard to the two elements recited in **claim 10**, the Office Action again relies on paragraph 96 of Curcio as indicating that <u>the **requested** bit rate could be **adjusted**</u> to go below the <u>lowest maximum bit rate</u> and/or that a **requested** <u>bit rate could be</u> **adjusted** to exceed the <u>highest maximum bit rate</u>.

However, Curcio specifically teaches away from a **requested** bit rate (e.g., see paragraph 93 which explains that according to Curcio, the server is <u>informed</u> of an available air-interface bandwidth and is <u>therefore no longer limited to the prior art bandwidth adaptation technique</u> in which the server either <u>blindly accepted</u> or <u>disregarded a client's request</u> for the server to send <u>at a particular bit rate</u>). Moreover, Curcio clearly does not disclose or suggest <u>adjusting a request</u>.

In any event, Curcio does not disclose or suggest <u>offering</u> a next higher network element supported value <u>if</u> the temporary working value is between a next higher and a next lower network element supported value **and** the next higher network element supported value is <u>less than or equal</u> to the <u>maximum bit rate **limit**</u> as is recited in **claim 10**.

Furthermore, paragraph 96 of Curcio does not disclose <u>offering</u> the next lower network element supported value <u>if</u> the temporary working value is between the next higher and the next lower network element supported values **and** the next higher network element supported value is <u>greater than</u> the **maximum bit rate limit**.

For at least the foregoing additional reasons, **claim 10** is not anticipated and is not obvious in light of Curcio and Arye.

Claim 11 recites subject matter similar to the first element of **claim 10**. Accordingly, arguments submitted in support of **claim 10** in this regard, are submitted in support of **claim 11**.

Claim 12 recites subject matter similar to the second element recited in **claim 10**. Accordingly, arguments similar to those submitted in support of **claim 10** in this regard, are submitted in support of **claim 12**. Paragraph 96 of Curcio does not disclose or suggest adjusting a requested bit rate. Furthermore, even if paragraph 96 could be construed as disclosing or suggesting adjusting a requested bit rate, such a disclosure would not disclose or suggest the subject matter of **claims 11** and **12**.

For at least the foregoing additional reasons, **claims 11** and **12** are not anticipated and are not obvious in light of Curcio and Arye.

As pointed out by the Office Action, original **claim 16** included a number of typographical errors. Accordingly, **claim 16** has been amended to remove an inappropriate use of the word --of-- and to replace four inappropriate uses of the

word --lowest-- with the phrase "temporary working". It is respectfully submitted that the amendments to **claim 16** are supported throughout the specification, including, for example, Fig. 2 (e.g., 246, 250, 254, 258, 262, 266, 270) and do not represent new matter, could have been anticipated and do not require a new search.

In an effort to explain the rejection of **claim 16**, the Office Action cites paragraph 93, lines 3-8, with regard to the **first element** of **claim 16**. However, discussion of a server receiving an OPTIONS or SET PARAMETER MESSAGE including an indication of available bandwidth does not disclose or suggest receiving a requested maximum bit rate attribute value.

With regard to the **third** element of **claim** 16, as explained above, paragraph 94, lines 1-11, of Curcio does not disclose or suggest determining a temporary working value from among the requested maximum bit rate attribute value and a maximum bit rate limit. Even the characterization of lines 1-11 provided by the Office Action, that: -the server chooses a bit rate from the available bit rates, which is later increased or decreased using other bandwidth adjustment techniques-- does not disclose or suggest determining a temporary working value from among the requested maximum bit rate attribute value and the maximum bit rate **limit**. Furthermore, it is respectfully submitted that the characterization of lines 1-11 provided by the Office Action represents a **clear error**. Curcio does not disclose or suggest increasing a chosen bit rate by using other bandwidth adjustment techniques.

For at least some or all of the foregoing reasons, the explanation of the rejection of **claim 16** includes **clear errors** and **claim 16** is not anticipated and is not obvious in light of Curcio and Arye.

With regard to the **fourth element** recited in **claim 16**, the Office Action cites paragraph 94, lines 1-10, of Curcio. However, even if the cited portion disclosed or suggested that the server can choose a new transmission bit rate that may be higher or lower than a maximum bit rate requested by the client and use additional bandwidth adjustment techniques to achieve the proper requested maximum bit rate (which is disputed), such a disclosure would not disclose or suggest determining if a temporary working value is a network element supported value, above all network element supported values, below all network element supported values or between two network

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element supported values as is recited in the subject fourth element of **claim 16**. Curcio does not disclose or suggest a temporary working value or determining if such a value meets the criteria listed in **claim 16**.

The **fifth, sixth, seventh, eighth** and **ninth** elements recited in **claim 16** recite offering various values if certain various conditions are met. In regard to each of these elements, the Office Action relies on paragraph 96. However, paragraph 96 does not disclose or suggest offering a value. Furthermore, paragraph 96 does not disclose or suggest offering some value in response to a maximum bit rate request. Instead, paragraph 96 addresses choosing a transmission rate based on available bandwidth information. It is respectfully submitted that Curcio does not disclose or suggest **offering** the chosen bit rate. **Instead,** the server simply transmits according to the chosen rate or according to an adjustment thereof.

Furthermore, paragraph 96 does not disclose or suggest the subject matter of the **ninth** unamended **element** of **claim 16**, which recites offering the next lower network element supported value, if the temporary working value is between the next higher and the next lower network element supported value **and** the next highest network element supported value is greater than the maximum bit rate **limit**.

For at least the foregoing additional reasons, **claim 16** is not anticipated and is not obvious in light of Curcio and Arye.

With regard to the **second element** recited in **claim 16**, the Office Action stipulates that Curcio does not disclose determining if a lowest network element supported maximum bit rate value is equal to or less than a maximum bit rate limit associated with the subscriber and if the lowest network element supported maximum bit rate value is equal to or less than the maximum bit rate limit associated with the subscriber performing at least some of the third through tenth elements recited in **claim 16**.

In this regard, the Office Action relies on Fig. 4 of Arye and the database 76 and look up table depicted therein and characterizes that depiction as the disclosure of the provision of using a content switch and database, wherein the database includes entries for the content being streamed to the client, wherein each database entry includes a look up table comprising an entry for each secondary multimedia substream associated

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with that specific content.   However, even if that characterization is true (which is disputed), that does not disclose or suggest the subject matter of the second element of **claim 16**.

For at least the foregoing additional reason, **claim 16** is not anticipated and is not obvious in light of Curcio and Arye.

Additionally, the Office has not met its burden for presenting a *prima facie* case of obviousness.

There is no motivation in the art to combine the database and look up table of Arye with the subject matter of Curcio.   Furthermore, as indicated above, such a combination would not arrive at the subject matter of **claim 16**.

It is respectfully submitted that the only motivation for making such a combination is the mistaken belief of the Office Action that the depiction of the database and look up table in Arye somehow discloses the subject matter of the second element of **claim 16**. Accordingly, the only motivation to make the combination is information gleaned from the present application.   Therefore, the rejection of **claim 16** is based on impermissible hindsight reasoning.

With regard to **claim 17**, the Office Action asserts that paragraph 93, lines 3-8, of Curcio discloses receiving a requested maximum bit rate attribute value and that paragraph 94 discloses means for offering to provide communication services in association with a maximum bit rate value.

However, paragraph 93 discusses a client sending an OPTIONS or SET PARAMETER message to a streaming server. Curcio does not disclose or suggest receiving a requested maximum bit rate attribute value.   Paragraph 94 discusses adapting a transmission rate to an available bandwidth.   Paragraph 94 does not disclose or suggest means for offering to provide communication services in association with a maximum bit rate value. Moreover, as pointed out by the Office Action, these two elements of **claim 17** are expressed in terms of means for providing functions. Accordingly, 35 USC §112, sixth paragraph, is applicable.   These claim elements should be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Additionally, the Office Action stipulates that Curcio does not disclose the bulk of the subject matter of **claim 17** and relies on the database 76 and look up table 78 of Fig. 4 of Arye for this disclosure.

However, it is respectfully submitted that <u>nothing in the depiction of the database or look up table</u> of Arye, which the Office Action characterizes as disclosing the provision of using a content switch and database, wherein the database includes entries for the content being streamed to the client, wherein each database entry includes a look up table comprising an entry for each secondary multimedia substream associated with that specific content, <u>discloses or suggests selecting a maximum bit rate offered from a subset of supported maximum bit rate values, the subset including only those elements of the set of maximum bit rate values that are equal to or less than the</u> **maximum bit rate limit**<u>, the selected value being equal to the value of the subset element that is greater than or equal to, the lower of the requested maximum bit rate value and the</u> **maximum bit rate limit** <u>or has the highest value of the subset</u>, for which Arye is relied. The assertions of the Office Action in this regard represent **clear errors** of the Office Action. Additionally, as discussed above, there is no motivation in the art for making the suggested combination and making that combination does not arrive at the subject matter of **claim 17**.

Furthermore, the subject matter for which Arye is relied is part of a means plus function element and even if Arye could be construed as disclosing some means for providing the recited functions (which is disputed), Arye clearly does not disclose or suggest the same means as disclosed in the present application.

For any or all of the foregoing additional reasons, **claim 17,** as well as **claims 18-24,** which depend therefrom, is not anticipated and is not obvious in light of Curcio and Arye.

With regard to **claim 18**, the Office Action relies entirely on Curcio and cites paragraph 94, lines 1-11, for disclosure of means for determining a temporary working value from among the requested maximum bit rate value and the maximum bit rate limit. However, paragraph 94, lines 1-11, does disclose or suggest a <u>temporary working value</u>, does disclose or suggest a requested maximum bit rate attribute value and does not disclose or suggest a <u>maximum bit rate limit</u>. Specific identification of values

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mentioned in paragraph 94 that the Office considers to be analogous to a temporary working value and a maximum bit rate limit are respectfully requested.

Additionally, it is respectfully submitted that bandwidth adaptation as discussed by Curcio does not involve the transmission or reception of a requested maximum bit rate attribute value such as that discussed in the present application and recited in, for example, **claim 18**.

For at least the foregoing additional reasons, **claim 18** is not anticipated and is not obvious in light of Curcio and Arye. Additionally, the characterization of lines 1-11 of paragraph 94 provided by the Office Action represents **clear errors**. For example, the Office Action indicates that the cited portion discusses bit rates which are later <u>increased</u> using bandwidth adjustment techniques. However, paragraph 94 only discusses decreasing bit rates by, for example, skipping transmission of some frames.

With regard to the **second element** of **claim 18**, the Office Action relies on paragraph 94, lines 1-10, of Curcio. However, paragraph 94 does not disclose or suggest a temporary working value and accordingly does not disclose or suggest means for determining whether a temporary working value is a network element supported value, above all network element supported values, below all network element supported values, or between two network element supported values. Moreover, paragraph 94, lines 1-10, does not make reference to a maximum bit rate requested by a client or a requested maximum bit rate or even choosing a new transmission rate that may be lower than a requested rate and using additional bandwidth adjustment techniques to achieve the proper requested maximum bit rate and the assertions of the Office Action in this regard represent **clear errors**.

With regard to the **third** and last **element** of **claim 18**, the Office Action relies on paragraph 96 of Curcio. However, paragraph 96 does not disclose or suggest offering to provide communication services or means therefor. Furthermore, paragraph 96 does not disclose or suggest a temporary working value or means for offering to provide communication services if a value is a network element supported value.

For at least the foregoing additional reasons, **claim 18** is not anticipated and is not obvious in light of Curcio and Arye.

It is noted that **claim 18** has been amended in a manner similar to that described above with regard to **claim 16**, to replace one instance of the word --lowest-- with the phrase --temporary working--. It is respectfully submitted that this amendment is supported, for example, by the recitation in original **claim 7**. Accordingly, this amendment does not require a new search or a new ground of rejection.

With regard to the first two elements of **claim 19**, the Office Action makes similar citations and assertions as were made with regard to the first two elements of **claim 18**. Accordingly, arguments similar to those submitted in support of **claim 18** in that regard are submitted in support of **claim 19**.

With regard to the recitation in **claim 19** of a means for offering to provide communication services in association with a highest network elements supported value if the temporary working value is above all network element supported values, the Office Action relies on paragraph 96 of Curcio. However, paragraph 96 does not disclose or suggest offering to provide communication services or means for offering to provide communication services. Furthermore, Curcio does not disclose or suggest a temporary working value or means for offering to provide communication services in association with the highest network element supported value if the temporary working value is above all network element supported values as is recited in **claim 19**.

For at least the foregoing additional reasons, **claim 19** is not anticipated and is not obvious in light of Curcio and Arye.

With regard to the first two elements of **claim 20**, the Office Action makes similar citations and assertions as were made in regard to the first two elements of **claims 18** and **19**. Accordingly, arguments similar to those submitted in support of **claims 18** and **19** in that regard are submitted in support of **claim 20**.

With regard to the third element of **claim 20**, the Office Action cites paragraph 96 and characterizes the subject matter there as disclosing that the server could choose the bit rate slightly higher than the requested maximum bit rate, in the case where the requested bit rate is below the lowest maximum bit rate. However, Curcio does not disclose or suggest a requested maximum bit rate or a lowest maximum bit rate. Moreover, even if the adaptation to the air-interface bandwidth is interpreted to include a requested maximum bit rate attribute value, it is submitted that Curcio does not disclose

or suggest a bit rate slightly higher than the available air-interace bandwidth. It is submitted that transmitting above the available air-interface bandwidth would lead to errors and Curcio does not disclose or suggest transmitting a higher rate than the available air-interface bandwidth.

Additionally, as indicated above, paragraph 96 does not disclose or suggest offering to provide communication services.

For at least the foregoing additional reasons, **claim 20** is not anticipated and is not obvious in light of Curcio and Arye.

With regard to the first two elements of **claim 21**, the Office Action makes similar citations and similar assertions to those made with regard to the first two elements of **claims 18, 19**, and **20**. Accordingly, arguments similar to those submitted in support of **claims 18, 19** and **20** in regard to the first two elements of those claims are submitted in support of **claim 21**.

With regard to the last two elements of **claim 21**, the Office Action makes similar citations and similar assertions to those made with regard to **claim 10**. Accordingly, in this regard, arguments similar to those submitted in support of **claim 10** are submitted in support of **claim 21**.

For at least the foregoing additional reasons, **claim 21** is not anticipated and is not obvious in light of Curcio and Arye.

With regard to the first element of **claim 26**, the Office Action cites lines 3-8 of paragraph 93. However, paragraph 93 does not disclose or suggest a network element or network element comprising a network interface. Moreover, paragraph 93 does not disclose or suggest a network interface operative to receive a requested maximum bit rate attribute value directly or indirectly from user equipment of the subscriber. It is respectfully requested that the bandwidth adaptation of Curcio does not involve a request including a maximum bit rate attribute value as disclosed and claimed in the present application.

With regard to the third element recited in **claim 26**, the Office Action cites paragraph 94, lines 1-11, of Curcio. However, paragraph 94 does not describe any hardware and does not disclose or suggest a second comparator operative to determine a temporary working value equal to the lowest value selected from among the

requested maximum bit rate attribute value and the maximum bit rate limit. Most clearly, paragraph 94, lines 1-11, does not disclose or suggest a maximum bit rate **limit** or a comparator operative to select between a maximum bit rate limit and a maximum bit rate attribute value.

For at least the foregoing reasons, **claim 26**, as well as **claims 27-29**, which depend therefrom, is not anticipated and is not obvious in light of Curcio and Arye.

With regard to the fourth element recited in **claim 26**, the Office Action cites lines 1-10 of paragraph 94. However, paragraph 94 does not disclose or suggest any particular hardware configuration and does not disclose or suggest a bit rate value classifier operative to determine if a temporary working value is a network element supported value, above all network element supported values, below all network element supported values or between two network element supported values. Additionally, the characterization of lines 1-10 of paragraph 94 provided by the Office action represents a **clear error**. Lines 1-10 of paragraph 94 do not disclose or suggest that a server can choose a new transmission bit rate that may be <u>lower</u> than a maximum bit rate requested by the client and use additional bandwidth adjustment techniques to achieve the proper requested maximum bit rate. Curcio does not disclose or suggest a maximum bit rate requested by the client. Indeed, it is submitted that paragraph 93 teaches away from such requests. Furthermore, even if the cited portion is fairly construed as suggested by the Office Action, such disclosure does not disclose or suggest a bit rate value classifier operative to determine if a temporary working value is above all network element supported values or below all network element supported values.

With regard to the last element recited in **claim 26**, the Office Action cites paragraph 96. However, paragraph 96 does not disclose or suggest generating an offer or a bit rate offer generator. Additionally, with regard to the bit rate offer generator and the recitation thereof that the bit rate offer generator is operative to offer a highest network element supported value in response to the maximum bit rate if the temporary working value is above all network element supported values, the Office Action characterizes paragraph 96 as indicating that the server could choose the bit rate slightly higher than the requested maximum bit rate in the case where the requested bit

rate is below the lowest maximum bit rate. However, that does not disclose or suggest the recited subject matter in question: offering a highest network element supported value if the temporary working value is _above_ all network element supported values.

Additionally, with regard to the recitation indicating that the bit rate offer generator is operative to offer a next higher network element supported value if the temporary working value is between the next higher and a next lower network element supported value _and_ the next higher network element supported value is less than or equal to the _maximum bit rate limit_, the Office Action asserts that the server "could choose" the bit rate slightly higher than the requested maximum bit rate, in the case where the requested bit rate could be adjusted to go below the lowest maximum bit rate.

However, _paragraph 96 does not disclose or suggest adjusting a **requested** bit rate_. Furthermore, paragraph 96 does not disclose or suggest that the server could choose the bit rate slightly higher than the requested maximum bit rate, in the case where the requested bit rate could be adjusted to go below the lowest maximum bit rate. _It is respectfully submitted that this is pure conjecture on the part of the Office._

Furthermore, paragraph 96 does not disclose or suggest a maximum bit rate limit or offering a next higher network element supported value if the temporary working value is between the next higher and a next lower network element supported value _and_ the next higher network element supported value is less than or equal to such a maximum bit rate limit.

With regard to the recitation in **claim 26** indicating that the bit rate offer generator is operative to offer the next lower network element supported value if the temporary working value is between the next higher and the next lower network element supported value _and_ the next higher network element supported value is greater than the _maximum bit rate limit_, the Office Action again cites paragraph 96 and this time characterizes it as discloses that the server could choose the bit rate next lowest to the requested bit rate, in the case where the requested bit rate could be adjusted to exceed the highest maximum bit rate.

However, paragraph 96 does not disclose or suggest _adjusting **requested** bit rates_. Moreover, the aspect of the bit rate offer generator in question is not related to a situation where a requested bit rate exceeds a highest maximum bit rate. Furthermore,

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paragraph 96 does not disclose or suggest a maximum bit rate <u>limit</u> or offering a next lower element supported value if the temporary working value is between the next higher and the next lower network element supported value <u>and</u> the next higher network element supported value is greater than the maximum bit rate limit, as is recited in **claim 26**.

For any or all of the foregoing additional reasons, the rejection of **claim 26** represents **clear errors** of the Office Action and **claim 26**, as well as **claims 27-29**, which depend therefrom, is not anticipated and is not obvious in light of Curcio and Arye.

Claims 13-15, 22-24 and **27-29** were rejected under 35 USC §103(a) as being unpatentable over Curcio and Arye and further in view of Kalliokulju.

The Office Action stipulates that Curcio and Arye do not disclose the subject matter of **claim 13** and relies on Kalliokulju for this subject matter.

However, even if Kalliokulju indicates that a 3G-SGSN has main control of user connections and that it supervises user initiated establishment, modification and release of connections and starts network initiated modifications and release procedures, Kalliokulju does not disclose or suggest determining if an SGSN supported maximum bit rate value is below a maximum bit rate limit associated with a subscriber. Additionally, the assertion of the Office Action that Curcio and Arye disclose determining whether a subscriber requested bit rate is within limits of the supported maximum bit rates is respectfully traversed. Curcio and Arye do not disclose or suggest such bounds testing.

For at least the foregoing additional reasons, **claim 13** is not anticipated and is not obvious in light of Curcio, Arye and Kalliokulju. Additionally, the Office has not met its burden of presenting a *prima facie* case of obviousness. There is no motivation in the art to combine Curcio, Arye and Kalliokulju other than information gleaned from the present application. Accordingly, the rejection of **claim 13** is based on **impermissible hindsight reasoning**.

The assertion of the Office Action that the motivation to combine features is to clearly understand the functions is respectfully traversed. One would not design and build a system based on a combination of Curcio, Arye and Kalliokulju in order to understand the functions of components of a 3G-UMTS system (see paragraphs 2-9 of

the present application). Additionally, it is submitted that prior to the present invention, GGSNS did not perform this function.

For at least the foregoing additional reasons, **claim 13** is not anticipated and is not obvious in light of Curcio, Arye and Kalliokulju.

The Office Action stipulates that Curcio and Arye do not disclose the subject matter of **claim 14** and relies on Kalliokulju for this disclosure. However, even if Kalliokulju indicates that a 3G-GGSN maintains the location information of the 3G-SGSN, which serves the mobile station where the packet is targeted and that the main function of a 3G-GGSN is to make interworking functions between UMTS network and an external network, such as the Internet, this does not disclose or suggest determining if a GGSN supported maximum bit rate value is below a maximum bit rate limit associated with a subscriber. It is respectfully submitted that Kalliokulju does not disclose or suggest that a GGSN performs this function. Additionally, it is submitted that prior to the present invention, GGSNS did not perform this function (paragraphs 2-9). Additionally, the assertions of the Office Action that Curcio and Arye disclose determining whether the subscriber requested bit rate is within limits of supported maximum bit rates is respectfully traversed.

Additionally, the Office has not met its burden of presenting a *prima facie* case of obviousness. There is no motivation in the art to combine Curcio, Arye and Kalliokulju other than that gleaned from the present application. Accordingly, the rejection of **claim 14** is based on <u>impermissible hindsight reasoning</u>. The motivation alleged by the Office Action is respectfully traversed. One of ordinary skill in the art would not be motivated to design and build systems based on a combination of Curcio, Arye and Kalliokulju in order to understand the functions of components of 3G-UMTS systems.

The Office Action stipulates that Curcio and Arye do not disclose or suggest the subject matter of **claim 15** and rely on Kalliokulju for this disclosure. However, even if Kalliokulju mentions a radio network controller, this does not disclose or suggest determining if an RNC supported maximum bit rate value is below a maximum bit rate limit associated with a subscriber as is recited in **claim 15**.

Additionally, the assertion that Curcio and Arye disclose determining whether the subscriber requested bit rate is within the limits of supported maximum bit rates is

respectfully traversed. Curcio and Arye do not disclose any such bounds testing. Additionally, the Office has not met its burden of presenting a *prima facie* case of obviousness. There is no motivation in the art other than information gleaned from the present application to combine elements of Curcio, Arye and Kalliokulju. Accordingly, the rejection of **claim 15** is based on <u>impermissible hindsight reasoning</u>. The motivation suggested by the Office Action is specious. One of ordinary skill in the art would not build or design a system based on a combination of the suggested elements of Curcio, Arye and Kalliokulju to clearly understand the functions of components of a 3G-UMTS system.

For at least the foregoing additional reasons, **claim 15** is not anticipated and is not obvious in light of Curcio, Arye and Kalliokulju.

Claims 22 and **27** were rejected on the same grounds as presented with regard to **claim 13**. Accordingly, arguments similar to those submitted in support of **claim 15** are submitted in support of **claims 22** and **27**.

Claims 23 and **28** were rejected according to the same grounds as those presented with regard to **claim 14**. Accordingly, arguments similar to those submitted in support of **claim 14** are submitted in support of **claims 23** and **28**.

Claims 24 and **29** were rejected on the same grounds as presented with regard to **claim 15**. Accordingly, arguments similar to those submitted in support of **claim 15** are submitted in support of **claims 24** and **29**.

<u>**Telephone Interview**</u>

In the interests of advancing this application to issue the Applicant(s) respectfully request that the Examiner telephone the undersigned to discuss the foregoing or any suggestions that the Examiner may have to place the case in condition for allowance.

CONCLUSION

Claims 1-29 remain in the application. **Claims 1, 5, 6, 9, 13-16** and **18** have been amended to correct typographical errors and the like. These amendments do not require a new search. Accordingly, any subsequent rejection based on new grounds should not be made final. For at least the foregoing reasons, the application is in condition for allowance. Accordingly, an early indication thereof is respectfully requested.

Respectfully submitted,

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